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BEFORE THE ARIZONA CORPORATION COMMISSION

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MARC SPITZER
Chairman

JAMES M. IRVIN
Commissioner

WILLIAM MUNDELL
Commissioner

JEFF HATCH-MILLER
Commissioner

MIKE GLEASON
Commissioner

Arizona Corporation Commission

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IN THE MATTER OF QWEST CORPORATION'S
COMPLIANCE WITH SECTION 252(E) of the
TELECOMMUNICATIONS ACT OF 1996

Docket No. RT-00000F-02-0271

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S
COMPLIANCE WITH SECTION 271 OF THE
COMMUNICATIONS ACT OF 1996

Docket No. T-00000A-97-0238

ARIZONA CORPORATION COMMISSION,
Complainant,

Docket No. T-01051B-02-0871

v.

QWEST CORPORATION,

Respondent

NOTICE OF FILING TESTIMONY OF MICHAEL L. HAZEL

Mountain Telecommunications, Inc. ("MTI"), hereby files the Testimony of Michael L. Hazel on Behalf of Intervenor, Mountain Telecommunications, Inc., in Opposition to Proposed Settlement Agreement in the above-captioned matter.

Respectfully submitted,

Mitchell F. Brecher
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, NW
Washington, DC 20006
(202) 331-3100

August 29, 2003

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman

JAMES M. IRVIN
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) Docket No. T-01051B-02-0871

v.

QWEST CORPORATION,

Respondent

TESTIMONY OF MICHAEL L. HAZEL ON BEHALF OF
MOUNTAIN TELECOMMUNICATIONS, INC. IN
OPPOSITION TO PROPOSED SETTLEMENT AGREEMENT

1 **Q 1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND CURRENT**
2 **POSITION.**

3 A 1. My name is Michael L. Hazel. My business address is 1430 W. Broadway, Suite A200,
4 Tempe, Arizona 85282. I am Vice President, Network, Mountain Telecommunications, Inc.
5 (MTI).

6 **Q 2. WHAT ARE YOUR CURRENT RESPONSIBILITIES?**

7 A 2. I am responsible for management and operation of the MTI network, including the
8 deployment and operation of existing voice and data network switching and transmission
9 facilities. This includes more than 3,000 modems online with Internet service providers. My
10 duties include the procurement of interconnection facilities and circuits and the management of
11 MTI's use of Qwest network facilities and services. In addition, I audit and verify the invoices
12 which Qwest renders to MTI for network services and facilities. I also work with management
13 and with outside legal counsel in analyzing regulatory proceedings which affect MTI's interests
14 and manage MTI's participation in such proceedings, where appropriate.
15

16 **Q 3. PLEASE DESCRIBE YOUR PRIOR PROFESSIONAL EXPERIENCE AND POST-**
17 **SECONDARY EDUCATION?**

18 A 3. Attached to this testimony as Attachment 1 is a resume which describes my prior
19 employment and education.

20 **Q 4. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THE COMMISSION?**

21 A 4. Yes. I submitted direct testimony and rebuttal testimony in the so-called "mini-docket"
22 conducted by the Commission in Docket No. T-00000A-00-0194. I also submitted testimony in
23 the Show Cause proceeding (Docket No. T-01051B-02-0871).

24 **Q 5. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

25 A 5. The purpose of my testimony is to explain to the Commission why the proposed settlement
agreement jointly submitted by MTI and Qwest is not in the public interest, does not sufficiently

1 address and rectify the conduct which led to the three docketed proceedings which are the
2 subject of the settlement agreement, and should not be approved by the Commission.

3 **Q 6. HAS MTI PARTICIPATED IN ANY OF THE THREE CAPTIONED DOCKETED**
4 **PROCEEDINGS?**

5 A 6. Yes. MTI has intervened in Docket No. T-01051-02-0871 (Arizona Corporation
6 Commission v. Qwest), the so-called "Show Cause" docket. As an intervenor, MTI submitted
7 my testimony in that proceeding and submitted a post-hearing brief. It also participated in a
8 series of meetings which were held in July 2003 following Qwest's and Staff's discussions of a
9 proposed settlement agreement.

10 **Q 7. PLEASE EXPLAIN MTI'S REASONS FOR INTERVENING IN THE SHOW**
11 **CAUSE DOCKET?**

12 A 7. On June 12, 2002, the Commission issued Order No. 64922 in Docket No. T-00000A-00-
13 0194 Phase II (In the Matter of Investigation into Qwest Corporation's Compliance with Certain
14 Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts). In
15 that order, the Commission required Qwest to implement certain changes to its rates for
16 unbundled network elements, including the rates to be charged for unbundled transport.
17 Although that order became effective June 12, 2002 and Qwest was directed to set its rates in
18 conformance with that order forthwith, it did not begin to render invoices based on the new rates
19 until January 2003. When MTI began to receive its first invoices based on the new rates, it was
20 shocked and dismayed to discover that the rates being charged to it for local transport had
21 increased very significantly above the rates which had been in effect prior to the Phase II Order.
22 The impact of these unexpected rate increases became even more pronounced several weeks later
23 when Qwest began to invoice MTI the increased rates retroactively going back to June 12, 2002.
24 At my direction, MTI applied to intervene in Docket No. T-00000A-00-0194 Phase II and in the
25 Show Cause docket. Following receipt of MTI's intervention applications and a motion for

1 injunctive relief, Commission Staff conducted discovery. Based upon that discovery, Staff
2 determined that Qwest had improperly charged certain purchasers of transport service rates
3 which included charges for entrance facilities, even though those customers did not use entrance
4 facilities. In short, Qwest was charging customers for facilities which it was not providing and
5 which the customers were not using.

6 **Q 8. DID STAFF'S CONCLUSION LEAD TO FURTHER COMMISSION ACTION?**

7 A 8. Yes. On May 28, an expedited hearing was held on two issues regarding transport pricing.
8 The first issue was to address which of two Staff-proposed alternatives should be used for
9 adjusting the transport rates so as to ensure that transport customers not be charged excessive
10 rates which included charges for facilities which they did not use. The second issue was to
11 address whether the adjustments to the transport rates should be effective June 12, 2002 – the
12 effective date of the Phase II Order. Following that hearing, post-hearing briefs were filed. To
13 date, no action has been taken by the Commission in that proceeding.

14 **Q 9. HAS QWEST OBJECTED TO ADJUSTING THE TRANSPORT RATES?**

15 A 9. No. In the Mini-docket proceeding, Qwest expressed a preference for Staff Option 2 over
16 Staff Option 1, but it has not objected to the proposition that adjustment to the transport rates
17 would be appropriate.

18 **Q. 10 HAS QWEST OBJECTED TO ADJUSTING THE TRANSPORT RATES SO AS
19 TO EXCLUDE ENTRANCE FACILITIES EFFECTIVE JUNE 12, 2002 – THE
20 EFFECTIVE DATE OF THE PHASE II ORDER?**

21 A. 10. Yes. Qwest has vigorously opposed making such adjustment effective June 12, 2002 –
22 the effective date of the Phase II Order. Throughout the Mini-docket proceeding in Phase II,
23 Qwest objected to making any rate adjustment effective June 12, notwithstanding its own candid
24 recognition that its rates included charges for entrance facilities not used by certain of its
25 customers and notwithstanding the undisputed and undeniable fact that Qwest's delay of many

1 months before implementing the transport price hikes back to June 12, 2002 will result in
2 substantial undeserved revenues to it. Indeed, during the discussions which were held between
3 Staff, Qwest and intervenors regarding the Qwest-Staff proposed settlement, MTI specifically
4 suggested that Qwest agree to modify its rates for transport service using either Staff Option 1 or
5 Staff Option 2 proposed by Staff in Docket No. T-00000A-00-0194, effective June 12, 2002.
6 That suggestion was summarily dismissed by Qwest.

7
8 **Q 11. ARE MTI'S CONCERNS REGARDING THE PRICING OF TRANSPORT**
9 **WITHIN THE SCOPE OF THE ISSUES BEFORE THE COMMISSION IN THE SHOW**
10 **CAUSE PROCEEDING?**

11 A 11. Yes. The underlying issue in the Show Cause proceeding is whether Qwest properly
12 implemented the rate changes ordered by the Commission's Decision No. 64922. It is MTI's
13 view that Qwest's development of transport rates which include charges for entrance facilities in
14 circumstances where no such facilities are provided reflects an improper implementation by
15 Qwest of the Phase II Order. More importantly, by delaying the implementation of the Phase II
16 rate revisions until January 2003 – nearly seven months after that order's effectiveness, Qwest
17 was able to “blindsided” customers of its transport services, including, *e.g.*, MTI. Thus, Qwest's
18 treatment of transport pricing goes to the heart of the fundamental issue before the Commission
19 in the Show Cause proceeding – whether Qwest has properly implemented the Phase II Order.

20 **Q 12. DOES THE PROPOSED SETTLEMENT SUFFICIENTLY REDRESS QWEST'S**
21 **OVERCHARGING FOR TRANSPORT?**

22 A 12. No it does not. Under the proposed settlement agreement, Qwest's entire “penalty” for its
23 improper implementation of the Phase II Order would be a payment in the amount of \$150,000
24 to the State Treasurer (See Proposed Settlement Agreement at Section 1.
25

1 **Q 13. WHY IS THAT "PENALTY" INSUFFICIENT?**

2 A 13. There are two reasons. First, the payment will go to the State Treasurer, not to the entities
3 who have been harmed by Qwest's excessive charges. Second, the "penalty" amount is a
4 pittance as compared to the economic windfall which will be enjoyed by Qwest if it is permitted
5 to retain the excessive transport rate revenues resulting from the rates which have been charged
6 by it commencing June 12, and whenever the Commission acts on the effective date issue before
7 it in the Mini-docket. As of August 20, 2003, the amount invoiced by Qwest to MTI in monthly
8 recurring charges for transport based on Qwest's post-June 12, 2002 transport rates exceeds the
9 rates which would have been charged under the pre-June 12, 2002 rates by \$822,293.10. In
10 short, Qwest's windfall profit earned from one customer – MTI – would exceed the total amount
11 of the "penalty" it would pay to the State Treasurer by more than 548 percent! I cannot imagine
12 any company which would not be more than willing to make a "penalty" payment to the State in
13 the amount of \$150,000 if it were permitted to retain for itself many times that amount in excess
14 charges resulting from its improper implementation of rates based on a Commission order. The
15 purpose of a penalty is to punish wrongdoing and to dissuade others from engaging in similar
16 wrongdoing. Since the economic benefit to Qwest in this instance far outweighs the economic
17 hardship which would be imposed by the penalty, the payment set forth in the proposed
18 settlement agreement is wholly inadequate, would not compensate the victims of the improper
19 charges, would not deter similar conduct in the future, and should not be approved by the
20 Commission.
21

22
23 **Q 14. ARE THERE OTHER REASONS WHY THE PROPOSED SETTLEMENT AGREEMENT SHOULD NOT BE APPROVED?**

24 A 14. Yes. The discount credit provisions which would be made available to Competitive Local
25 Exchange Carriers (CLECs) are inadequate to fully compensate those CLECs for the economic

1 injury they have suffered as a direct and proximate result of the preferential treatment bestowed
2 by Qwest upon two CLECs – Eschelon and McLeod – pursuant to its unfiled and unlawful
3 agreements with those companies. For example, prior to those agreements, MTI provided certain
4 services to McLeod. However, once McLeod was able to extract sharply discounted prices from
5 Qwest in exchange for its silence in the Qwest Section 271 process, MTI was unable to retain
6 that business. In short, MTI lost a significant customer and substantial revenues due entirely to
7 Qwest’s unfiled agreement to provide special pricing to that customer. The one time ten percent
8 discount credit to MTI on services purchased from Qwest subject to Section 251(b) and 251(c)
9 will not fully compensate MTI for the revenues which it lost during the period that the Qwest –
10 McLeod agreement was in effect.
11

12 **Q 15. DOES THIS CONCLUDE YOUR TESTIMONY?**

13 A 15. Yes it does.
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Attachment 1

Michael Lee Hazel

Vice President, Network
Mountain Telecommunications, Inc.

Background

Mike Hazel joined MTI at the time of its founding and has been with the company since the beginning. Currently, Mike Hazel is Vice President, Network and manages network operations, including network deployment, operations and customer implementation. He is responsible for deployment and operation of the existing voice and data network including over 3,000 modems online with wholesale and collocated ISPs. His recent projects include completing migration from INP to LNP (first CLEC to complete in USW territories), deployment of ten rural collocations and negotiating the first Phase II, 4 -year Interconnect Agreement with the ILEC (Qwest).

Prior to joining MTI, Mike Hazel was responsible for integrating customer networks and applications into a cellular data network. His functions included Project Manager, WAN/LAN design and integration, application selection and optimization, internal and external support, presentation and training on CDPD, LAN, WAN and TCP/IP technologies. His prior primary responsibility was for selecting third-party hardware and software integrators and managing customer/vendor interaction. As part of this role, he was responsible for installation and support of gateways for legacy systems to interface with the CDPD network. The list of vendors included IBM, Motorola, AT&T, Novell, Microsoft, Lotus, SCO, PCSI, Sierra America, Cisco Systems and Bay Networks (Wellfleet). He was involved in the design, implementation, maintenance and troubleshooting of Local Area Networks and PCs. He also prepared existing networks for continuing maintenance contracts, including thorough documentation, debugging and stabilizing.

Mike Hazel has 20 years in the data and telecommunications field.

Experience

1994-1997 Bell Atlantic Mobile Systems

Systems Engineer

Integrated customer networks and applications with Bell Atlantic's Cellular Digital Packet Data (CDPD) Network. Functions included project management, WAN/LAN design and integration, application selection and optimization, internal and external support, presentation, and training on CDPD, LAN, WAN and TCP/IP technologies. Selected third-party hardware and software integrators and managed customer/vendor interaction. Installed and supported Gateways for legacy systems to interface with the CDPD network. The majority of CDPD hardware and software platforms implemented were first release or still in beta development. Vendors included IBM, Motorola, AT&T, Novell, Microsoft, Lotus, SCO, PCSI, Sierra Wireless, Cincinnati Microwave, Software Corporation of America, Cisco Systems and Bay Networks (Wellfleet). Supported several customers through the process of designing and integrating IP based, routed networks into their legacy systems, including SNA, IPX, X.25 and NetBIOS/NetBEUI based LANs and WANs

1994 Preferred Computer Care

Network Engineer

Designed, implemented, maintained and troubleshot LANs and PCs. Prepared existing networks for continuing maintenance contracts, including thorough documentation, debugging and optimizing.

1992-1993 Offline Services

Self-Employed Consultant

Provided consulting services for small businesses to help them determine their hardware and software needs. Functions included network design and installation, programming and extensive troubleshooting.

1989-1993 Maricopa County

Operations Lead

Supervised several operators supporting a DPS8(GCOS3), IBM 3090(MVS/XA), VAX6000(VMS) cluster and numerous PCs networked on Netware 3.11. Users environments included VT100-220, OS/2 PCs and IBM3270 terminals. Maintained external transport including Fiber, T1, DDs and 3002 circuits. Provisioned TCP/IP, IPX/SPX, SDLC, LAPB and DEC Ethernet protocols. Also trained on Netview, VTAM, CICS and DCL.

1988-1989 Maricopa County

Communications Technician

Installed, maintained and repaired all aspects of network communication systems. Bench tested hardware such as modems, MUXs and terminal controllers. Configured terminal, communications and FNP equipment. Supported Synchronous, Asynchronous and BiSynchronous transports.

1983-1988 Maricopa County

Mainframe Operations

Operated H6680(GCOS3), DPS8(GCOS3) and DPS6(GCOS6) mainframe computers primarily in a batch environment with emphasis on communications and training of new operators. Performed periodic system saves, restores and recoveries.

1979-1981 U.S. Air Force

HQ Mainframe Operator

Operated two H6060 mainframe systems with emphasis on WWMCCS. Ensured timely throughput of nightly production runs, performance of nightly saves as well as periodic systems saves, restores and recoveries. Maintained, saved and established mainframe configurations.

**Education /
Certifications**

- Gateway College – VTAM Operations, REXX Programming, CICS Overview Operation, TXO/ISPF, MVS JCL, VAX DCL
- Phoenix College – COBOL programming
- USAF Technical Training – H6000 Mainframe Operations, PDP-11 and WW Operations
- AST Server Support
- Microsoft Product Specialist (13822)
- Novell CNE (#6217342), Novell CNA v3.11

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<p>Timothy Berg Fennemore Craig 3003 North Central Avenue Suite 2600 Phoenix, AZ 85012</p>	<p>Thomas F. Dixon, Jr. MCI WorldCom 707 17th Street Suite 3900 Denver, CO 80202</p>
<p>Lyn Farmer Chief Administrative Law Judge Jane Rodda, Administrative Law Judge Arizona Corporation Commission 1200 West Washington Street Phoenix, AZ 85007</p>	<p>Raymond S. Heyman Michael Patten Roshka, Heyman & DeWulf 400 East Van Buren Street Suite 800 Phoenix, AZ 85004-3906</p>
<p>Andrew Crain Charles Steese QWEST Corporation 1801 California Street Suite 5100 Denver, CO 80202</p>	<p>Mary E. Steele Daniel Waggoner Davis Wright Tremaine LLP 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688</p>
<p>Maureen Arnold Qwest Corporation 3033 North Third Street Room 1010 Phoenix, AZ 85012</p>	<p>Joyce B. Hundley United States Department of Justice Antitrust Division City Center Building 1401 H Street, NW Suite 8000 Washington, D.C. 20530</p>
<p>Richard S. Wolters Michel Singer Nelson AT&T 1875 Lawrence Street Room 1575 Denver, CO 80202-1847</p>	<p>Lyndon J. Godfrey VP, Government Affairs Rod Aguilar AT&T 795 Folsom Street Suite 2104 San Francisco, CA 94107</p>
<p>Michael M. Grant Todd C. Wiley Gallagher & Kennedy 2575 East Camelback Road Phoenix, AZ 85016-9225</p>	<p>Christopher Kempley, Chief Counsel Legal Division Arizona Corporation Commission 1200 West Washington Street Phoenix, Arizona 85007</p>
<p>Thomas H. Campbell Lewis & Roca 40 North Central Avenue Phoenix, AZ 85007</p>	

1	Maureen A. Scott Legal Division Arizona Corporation Commission 1200 West Washington Street Phoenix, Arizona 85007	Harry Pliskin Senior Counsel Covad Communications Company 7901 Lowry Boulevard Denver, CO 80230
4	Caroline Butler Legal Division Arizona Corporation Commission 1200 West Washington Street Phoenix, Arizona 85007	Karen L. Clauson Senior Director of Interconnection Eschelon Telecom, Inc. 730 Second Avenue South Suite 1200 Minneapolis, MN 55402
7	Ernest G. Johnson Director Utilities Division Arizona Corporation Commission 1200 West Washington Street Phoenix, AZ 85007	Thomas L. Mumaw Snell & Wilmer One Arizona Center Phoenix, AZ 85004
10	Andrew O. Isar TRI 4312 92 nd Avenue, NW Gig Harbor, WA 98335	Darren S. Weingard Stephen H. Kukta Sprint Communications Co. LP 1850 Gateway Drive 7 th Floor San Mateo, CA 94404
13	Joan S. Burke Osborn & Maledon 2929 North Central Avenue 21 st Floor Phoenix, AZ 85067-6379	Richard W. Wolters AT&T 1875 Lawrence Street Suite 1575 Denver, CO 80202
16	Diane Bacon Legislative Director Communications Workers of America 5818 North 7 th Street Suite 206 Phoenix, AZ 85014-5811	Gregory Hoffman AT&T 759 Folsom Street Room 2159 San Francisco, CA 94107
19	Traci Grundon Mark P. Trinchero Davis Wright Tremaine LLP 1300 Southwest Fifth Avenue Suite 2300 Portland, OR 97201	Jim Scheltema Blumenfeld & Cohen 1655 Massachusetts Avenue, NW Suite 300 Washington, D.C. 20036
23	Brian Thomas VP Regulatory -- West Time Warner Telecom, Inc. 520 Southwest Sixth Avenue Suite 300 Portland, OR 97204	Jeffrey Crocket Jeffrey B. Guldner Snell & Wilmer One Arizona Center Phoenix, AZ 85004

1 Mark DiNunzio
2 Cox Arizona Telecom, LLC
3 20401 North 29th Avenue
Suite 100
Phoenix, AZ 85027

4 Jon Loehman
5 Managing Director, Regulatory
6 SBC Telecom Inc.
7 5800 Northwest Parkway
Suite 135, Room 1.S.40
San Antonio, TX 78249

8 Kimberly M. Kirby
9 Davis Dixon Kirby LLP
10 19200 Von Karman Avenue
Suite 600
Irvine, CA 92612

11 Dated at Washington, D.C. this 29th day of August, 2003.

Peter S. Spivack
Douglas Nizarian
Martha Russo
Hogan & Hartson, LLP
555 13th Street, NW
Washington, D.C. 20004

Cynthia A. Mitchell
1470 Walnut Street
Suite 200
Boulder, CO 80302


Michelle D. Diedrick

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